

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

PLANNED PARENTHOOD SOUTH)	
ATLANTIC, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 1:23-cv-00480-CCE-LPA
v.)	
)	
JOSHUA STEIN, <i>et al.</i> ,)	
)	
Defendants.)	

NOTICE TO COURT OF FACTUAL DEVELOPMENT

On June 21, 2023, Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary Injunction (DE 11, 12) (“Plaintiffs’ Motion”) seeking to block the entirety of Part I and the hospitalization requirement¹ of Part II of North Carolina Session Law 2023-14 (“the Act”). On the morning of June 22, 2023, this Court set a hearing on Plaintiffs’ request for a TRO for this Wednesday (Text Order of June 22, 2023). On June 22, 2023, the North Carolina Senate voted in favor of several amendments to the Act (the “proposed amendments”), most of which seem directly responsive to Plaintiffs’ complaint. *See* House Bill 190 (“H.B. 190”) (attached as Ex. 1). The proposed amendments:

- Insert a cross-reference to the fetal homicide statute to make clear that there is an exception for lawful abortion. H.B. 190, § 14.1.(a) (amending § 14-23.7). The lack

¹ To be codified at N.C. Gen. Stat. § 90-21.82A.

of such a cross-reference is the basis for one of Plaintiffs' claims in this action.

See, e.g., Compl. (DE 1) ¶¶ 3, 42–44.

- Remove the word “advise” in the description of unlawful activity related to abortion after the twelfth week of pregnancy and clarify that the remaining prohibitions apply only to abortions in North Carolina, H.B. 190, §§ 14.1(b)–(c) (amending §§ 90-21.81A, -21.81B). Plaintiffs challenged this provision. Compl. ¶¶ 8, 69–70.
- Repeal section 90-21.83C from the original bill, H.B. 190 § 14.1(g), which raised confusion about whether this new 72-hour waiting period had a medical emergency exception and whether the 72-hour period needed to be restarted if certain information like the physician's name changed. Plaintiffs challenged this provision. Compl. ¶¶ 6, 62–65.
- Change the time for reporting for minors' abortions to 30 days, H.B. 190 § 14.1(j) (amending § 90-31.93), rather than three days. Plaintiffs challenged this provision. Compl. ¶¶ 7, 68.
- Resolve the inconsistency about when medication abortion may be provided, clarifying that it is not unlawful after 70 days, H.B. 190, § 14.1(f) (amending § 90-21.83B). Plaintiffs challenged this provision. Compl. ¶¶ 4, 45–51, 78.

It is Plaintiffs' understanding that the North Carolina Senate will have a third reading on these amendments in the evening of June 26, 2023. Plaintiffs further understand that the North Carolina House of Representatives will consider whether to concur with these amendments thereafter, sometime during the week of June 26, 2023.

Plaintiffs do not know if there will be further changes to the amendments. If the House concurs, and the proposed amendments pass, the Governor will have ten days to act on the bill. The amendments, however, do not change the effective date, which, for most of the provisions of the Act that Plaintiffs challenge, is July 1, 2023. As a result, if the proposed amendments do not become law before that date, the current version of the Act would take effect despite these proposed changes, and Plaintiffs' need for a temporary restraining order would be unchanged.

The pending changes to the Act, if adopted as currently written, will affect Plaintiffs' claims and likely render many (but not all) of their claims moot. But even if the amendments become law before July 1, 2023, Plaintiffs' need for a temporary restraining order persists because Plaintiffs will need time to assess and comply with this complex and ever-changing law. Moreover, Defendant Department of Health and Human Services ("DHHS") has already promulgated forms that health care providers must use to comply with the pre-amendment version of the Act. If the proposed amendments become law, DHHS will need time to adjust those forms.

Plaintiffs will continue to keep the Court apprised of the legislative developments in the event the amendments pass as written and in light of the parties' stipulation on dates of effectiveness.

Dated: June 26, 2023

Respectfully submitted,

s/ Peter Im

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CERTIFICATE OF SERVICE

I hereby certify that, on June 26, 2023, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing, and will also serve this motion on counsel for Defendants via email, as well as via certified U.S. mail at the addresses listed below if Defendants' counsel has not agreed to email-only service:

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